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September 9, 2021

By ECF

Honorable Brian M. Cogan
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Lynda Cutbill v. Cold Spring Harbor Central School District et al.,
No. 21 Civ. 3326

Dear Judge Cogan:

Counsel submits this joint letter with a brief case description and addressing any contemplated motions pursuant to the Court's June 16, 2021, Scheduling Order. The Initial Status Conference is scheduled for September 14, 2021 at 12:00 p.m.

Plaintiff's Position

For a period of five years, beginning in middle school and lasting through her 1982 high school graduation, Cold Spring Harbor High School ("CSHHS") teacher William Kail sexually abused Lynda Cutbill, a 1982 graduate. Ms. Cutbill alleges that Defendants' negligence in supervising Kail, and their failure to protect her from him—a known sexual predator—caused the abuse and damages that resulted therefrom. Ms. Cutbill alleges that the Defendants knew that Mr. Kail had sexually abused another high school student three years after he had begun abusing her and two years before he eventually stopped. They also knew or should have known that he had, for years, engaged in a pattern of sexually inappropriate conduct with other students. According to her complaint, the defendants were indifferent to the danger Mr. Kail presented to Ms. Cutbill despite having actual and constructive notice that he presented an imminent danger to his female students.

Defendant Cold Spring Harbor Central School District (the "District") owned, operated, and maintained CSHHS and employed Mr. Kail. The Cold Spring Harbor Central School District Board of Education (the "Board") was responsible for setting District policy and hiring and firing teachers, administrative staff, and the School superintendent. The abuse Ms. Cutbill

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suffered was a reasonably foreseeable result of Defendants' breach of their duties. Plaintiff's negligence action is timely pursuant to the New York Child Victims Act. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332 because Plaintiff resides in Maryland and Defendants reside in New York.

Defendants' Position

Defendants' position is they were unaware Mr. Kail posed any risk to Ms. Cutbill and were not aware of any prior accusations against Mr. Kail similar in nature to those alleged by Ms. Cutbill.

Joint Request

For discovery purposes only, the parties ask the Court to join Ms. Cutbill's case with Ms. Susan Rule Sandler's related case (Index No. 21-CV-3327) against the same Defendants—the District and the Board. Both Plaintiffs were class of 1982 CSHHS graduates. Because both Plaintiffs were abused by CSHHS teachers during overlapping time periods, the same administrators and board members failed to act to prevent the abuse. The legal issues and standard of care in both cases are identical. The witnesses in each case also overlap—including School administrators, staff members, and students. Accordingly, it would be wasteful and inefficient to depose those witnesses who are relevant to both cases on two separate occasions. Moreover, Ms. Cutbill is a relevant witness to Ms. Sandler's action, as Ms. Cutbill has knowledge of the School's response to Ms. Sandler's sexual abuse. The parties are not asking that the cases be consolidated for trial at this juncture and reserve their rights to make a motion at the appropriate time as to how these cases should be tried. However, Defendants' position is that the legal and factual questions with regard to both claims are distinct, and defendants consent only to the joinder of these matters for the sake of efficiency, and for discovery only, while dispositive motion practice and trial of each matter should remain distinct and separate.

Anticipated Motions

Defendants anticipate filing a motion for summary judgment at the close of discovery.

Discovery Period

The parties jointly ask for a longer discovery period than preliminarily proposed by the Court, with discovery to close on March 18, 2022. The parties are requesting this extended period for several reasons: First, the relevant witnesses are largely third parties, many elderly, and the parties expect it will be challenging, especially in view of COVID, to schedule depositions. Second, it may be time consuming to locate the relevant documents—including documents in the possession of third parties—because the alleged underlying abuse occurred roughly 40 years ago.

The parties have begun discovery. The parties negotiated a protective order, which the Court so-ordered on August 23, 2021. We exchanged Rule 26(a) disclosures and Plaintiff served document requests on Defendants. Both parties have served numerous third-party

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subpoenas. Finally, the parties have scheduled the first third-party deposition for September 20, 2021.

We look forward to discussing this further with the Court.

Respectfully submitted,



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